



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,580	03/25/2004	Bryan Christopher Chagoly	AUS920040049US1	7123
35525	7590	02/08/2008		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER VERDI, KIMBLEANN C	
			ART UNIT 2194	PAPER NUMBER
			NOTIFICATION DATE 02/08/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/809,580	<b>Applicant(s)</b> CHAGOLY ET AL.	
	<b>Examiner</b> KimbleAnn Verdi	<b>Art Unit</b> 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-14, 16-18, 20-24, 26-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14, 16-18, 20-24, 26-28, and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**WILLIAM THOMSON**  
**SUPERVISORY PATENT EXAMINER**

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to the Amendment filed on November 21, 2007. Claims 1-4, 6-14, 16-18, 20-24, 26-28, and 30 are pending in the current application. This action has been made FINAL. All previously outstanding objections and rejections to the Applicant's disclosure and claims not contained in this Action have been respectfully withdrawn by the Examiner hereto.

#### ***Allowable Subject Matter***

1. Claims 2, 12, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 3, 6, 11, 13, 16, 21, 23, and 26 have been considered but are moot in view of the new ground(s) of rejection.
3. Applicant's arguments filed on November 21, 2007 with respect to the 35 U.S.C. 101 rejection of claims 21-30 have been fully considered but they are not persuasive (see the 35 U.S.C. 101 rejection below).

#### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 21-30, the "computer readable medium," in accordance with Applicant's specification, may be transmission media which is a signal bearing media, for example radio frequency and light wave transmissions (paragraph [0043]). This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-11, 13-20, 21, and 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Application Publication 2005/0039171, A1 to Avakian et al. (hereinafter Avakian) in view of United States Patent 6, 792,460 B2 to Oulu et al. (hereinafter Oulu).

8. As to claim 1, Avakian teaches the invention substantially as claimed including a method for dynamically monitoring and linking cross-process and cross-thread transactions in a bytecode injected application, the method comprising the computer implemented steps of:

inserting a bytecode inserted probe into the bytecode injected application (paragraphs [0051]-[0052]), wherein the bytecode inserted probe detects a correlating token in an inbound request (paragraphs [0155] and [0177]), retrieves the correlating token and dynamically determines if the inbound request is a child of an out of process transaction (paragraphs [0156] and [0158]);

responsive to a determination that the inbound request is a child of an out of process transaction, recording the inbound request (paragraph [0159]); and

linking the inbound request to the out of process transaction (paragraph [0159]).

Avakian does not explicitly disclose wherein the out of process transaction began in a cross-process or cross-thread.

Oulu teaches wherein the out of process transaction began in a cross-process or cross-thread (steps 710, 712, Fig. 7A, col. 14, lines 5-17, col. 15, lines 63-67, and col. 16, lines 1-10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the byte code instrumentation of Avakian with the teachings of a probe from Oulu because this feature would have provided a monitoring system that monitors the amount of time spent by specific application components, such as Java components, during execution of specific transactions on a web site or other

server system, and probe that runs on an application server initially instruments these application components (preferably at component load time) to add code for tracking execution start and stop times (col. 1, lines 38-44 of Oulu).

9. As to claim 3, Avakian teaches the method of claim 1, wherein the bytecode inserted probe detects the correlating token in the inbound request using a TransactionInfo object (e.g. ExecCallback interface 36, Fig. 2 and 3, paragraph [0155]).

10. As to claim 4, Avakian teaches the method of claim 1, wherein the correlating token includes a transaction monitoring policy (paragraph [0163]), and wherein the transaction monitoring policy defines whether the inbound request should be recorded (paragraph [0163]).

11. As to claim 6, Avakian teaches the method of claim 1, wherein the step of linking the inbound request to the out of process transaction is performed by a transaction performance monitor (paragraph [0168]).

12. As to claim 7, Avakian teaches the method of claim 1, further comprising: having the bytecode inserted probe determine if the inbound request is a root transaction (paragraph [0155]).

13. As to claim 8, Avakian teaches the method of claim 1, further comprising: having a transaction performance monitor determine if the inbound request is a root transaction (paragraph [0155]).

14. As to claim 9, Avakian teaches the method of claim 7, wherein the inbound request is a root transaction if the bytecode inserted probe fails to locate the correlating token within a container (paragraph [0158]).

Art Unit: 2194

15. As to claim 10, Avakian teaches the method of claim 1, wherein the bytecode inserted probe retrieves the correlating token from the inbound request while the bytecode inserted probe runs in-line with the inbound request (paragraphs [0155] and [0177]).

16. As to claim 11, this claim is rejected for the same reasons as claim 1 since claim 11 recites the same or equivalent invention, see the rejection to claim 1 above.

17. As to claims 13-20, these claims are rejected for the same reasons as claims 3-10 respectively, since claims 13-20 recite the same or equivalent invention, see the rejections to claims 3-10 above.

18. As to claim 21, this claim is rejected for the same reasons as claim 1 since claim 21 recites the same or equivalent invention, see the rejection to claim 1 above.

19. As to claims 23-30, these claims are rejected for the same reasons as claims 3-10 respectively, since claims 23-30 recite the same or equivalent invention, see the rejections to claims 3-10 above.

### ***Conclusion***

20. The prior art made of record on the accompanying PTO-892 and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KimbleAnn Verdi whose telephone number is (571) 270-1654. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone

Art Unit: 2194

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KV  
February 4, 2008

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER